

Applicants respectfully submit that this restriction/election of species requirement is not proper. Indeed, this is the fourth restriction requirement that has been entered in this application. Applicants respectfully submit that these restriction and election of species requirements are not proper. The purpose of the restriction and election of species requirement is to ensure that an undue burden is not created on the Patent Office while at the same time not creating undue burden on Applicants. The plethora of restriction requirements that have been entered in this application have created an undue burden on the Applicants. Moreover, Applicants believe that the restriction requirements and election of species requirements have only functioned to delay examination of this application on the merits. In this regard, the instant application was filed on May 18, 2000. Almost two and a half years later, the Patent Office is still submitting restriction and election of species requirements. MPEP Section 803.01 states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

MPEP, P. 800-4, emphasis added.

Regardless, in the spirit of cooperation, Applicants have amended Claim 30 and cancelled Claims 31 and 36. Applicants note for the record that these amendments are not made for purposes of patentability and accordingly no subject matter is being disclaimed herein. Applicants note that the amendment to Claim 30 does not narrow the claim. Applicants amendments are being solely made in order to elicit from the Patent Office an Office Action on the merits of the application.

Specifically, Claim 30 has been amended so that it is limited to the recovery of an organ. Therefore, Applicants have effectively chosen Group V set forth in the Office Action. With respect to the election of species set forth in the Office Action, the election requirements have been rendered moot. In this regard, Applicants have deleted from the claims the measurable indicator as well as deleted from the claims the specific organ from which the method of promoting recovery is chosen.

Accordingly, Applicants respectfully request that the Patent Office now examine the application on the merits.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Please amend Claim 30 as follows:

30. (Amended) A method for promoting [growth or] recovery of [a specific] an organ [selected from the group consisting of a small intestine, a duodenum, a jejunum, a liver and a skeleton muscle] of a mammal [as determined by a measurable indicator], the method comprising the steps of:

selecting a dietary protein selected from the group consisting of a protein hydrolysate having a specific degree of hydrolysis, one or more free amino acids and mixtures thereof; and administering a therapeutically effective amount of the dietary protein to the mammal.

Please cancel Claims 31 and 36 without prejudice or disclaimer.